IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2189 OF 2006

Kangaroo Kids Education Ltd. ..Petitioner.
Vs.
Rustomjee Kerawalla Foundation & Ors. .. Respondents.

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Mr. S.G. Aney, Senior Advocate with Mr. Rahul Chitnis i/b M/s. V. Deshpande & Co. for the Petitioner.

Mr. Janak Dwarkadas, Senior Advocate with Mr. Pratik Sakseria , Mr. Vikram Trivedi and Ms. Rajashree Rastogi i/b Manilal Kher Ambalal & Co. for Respondent Nos.1 to 4.

Mr. E.P. Bharucha, Senior Advocate with Mr. S.N. Vimadalal and Ms. Sandya Tolat for Respondent No.5.

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CORAM: DR. D.Y. CHANDRACHUD, J.

23rd August, 2006.

P.C. :

1. Rule. By consent and at the request of the learned counsel heard forthwith.

2. The Assistant Charity Commissioner was moved in proceedings under Section 41-A of the Bombay Public Trusts Act, 1950 by the Fifth Respondent ostensibly to protect the interests of the children who are receiving education in the school and it was

the contention of the Fifth Respondent that the franchise agreement between the Petitioner and the First Respondent would adversely affect the interests of the children. The Assistant Charity Commissioner by his order dated 19th July, 2006 issued directions to Respondent Nos.1 to 4 restraining them from acting in furtherance of the franchise agreement. The application filed by the Fifth Respondent was allowed.

3. The order of the Assistant Charity Commissioner has been challenged inter alia on the ground that though the Petitioner would be seriously affected by a direction to cancel the agreement, the Petitioner was not impleaded as a party to the proceedings. At the hearing of the present Petition, it has become unnecessary to go into the rival claims and contentions of the parties in regard to the validity of the franchise agreement since it is now common ground that the agreement dated 8th/9th May, 2002 has been terminated on 29th July, 2006 and the agreement dated 10th March, 2004 has been terminated on 9th August, 2006. Consequently, the basis on which the Fifth Respondent had moved the Assistant Charity Commissioner no longer survives. This position has fairly been accepted before the Court by Learned Counsel appearing for

all the contesting parities. The Court has also been informed that the Petitioner has also invoked the arbitration clause which forms part of the franchise agreement. In that view of the matter, since the very basis on which the Fifth Respondent had moved the Assistant Charity Commissioner no longer survives in view of the termination of the franchise agreement, the impugned order of the Assistant Charity Commissioner dated 19th July, 2006 is quashed and set aside without the expression of any opinion by this Court on the merits of the rival claims and contentions of the parties. In the circumstances, the application filed before the Assistant Charity Commissioner being Application 12 of 2006 shall also stand disposed of. The issuance of these directions has not been objected to and consequently, no further submissions have been urged on either side.

4. The Petitioner on the one hand and Respondents 1 to 4 on the other are at liberty to pursue their respective rights and contentions in arbitration and it is not necessary for this Court to express any view on their rights and contentions. The Petition is accordingly disposed of. No order as to costs.